

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of Revoked Certificate of:

PAUL J. DE GREGORIO
75 Belle Roche Court
Redwood City, California 94062

CPA Certificate No. 42571,

Petitioner.

Case No. SI-2005-7

OAH No. N2004110490

DECISION

This matter was heard before a quorum of the California Board of Accountancy in San Jose, California, on January 21, 2005. Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Petitioner Paul J. DeGregorio was present and was represented by Paul Charles Smith, Attorney at Law.

Michael Granen, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

FACTUAL FINDINGS

1. On May 10, 1985, the California Board of Accountancy issued to petitioner Paul J. DeGregorio Certified Public Accountant certificate number 42517.

2. Petitioner has a complicated disciplinary history with the board. It is unnecessary, for purposes of this decision, to fully recount that history. The following very brief synopsis will suffice: In October 1997 a citation was issued to petitioner who, among other things, having failed to renew his certificate had engaged in the practice of public accountancy without a valid license. Following a hearing, in a decision effective January 6, 1999, the board upheld the citation and ordered petitioner to discontinue engaging in the practice of public accountancy until he brought his certificate into current status. In a subsequent decision, the board revoked petitioner's certificate effective February 27, 2000, following a hearing in which it was found that petitioner had failed to comply with the

citation and prior decision in that he had continued to engage in the practice of accountancy, and that he had acted dishonestly and fraudulently when he altered a settlement stipulation that had been sent to him.

3. On October 12, 2004, petitioner filed the current petition for reinstatement of his revoked certificate. This is the third such petition he has filed. The board denied his first petition on August 27, 2001, finding that petitioner had "not come to grips with his most egregious violation" – his fraudulent alteration of the stipulation. Eleven months later, in July 2002, petitioner filed his second petition for reinstatement. The board denied that petition on October 16, 2002. In its decision, the board noted that, since the revocation of his certificate, petitioner had "embarked on a series of efforts all commendably tailored toward his rehabilitation. He maintains and pursues his continuing education; devotes substantial time to pro bono community service, [ecclesiastical] activities, and his family; reimbursed the Board for its enforcement costs; derives income as a tax return preparer; and particularly significant, has engaged in intensive psychotherapy. An evident benefit of petitioner's recent participation in psychotherapeutic intervention is his derived particular insight into his errant conduct, character, and nexus to his chosen profession."

The board concluded that petitioner had made "laudatory progress" since his appearance before the board a year earlier and had made evident gains from his participation in psychotherapy. But, the board noted, petitioner's gains were only recent. The board expressed "its hope that petitioner will continue to diligently and commendably pursue his course of rehabilitation." But, the board continued, "without diminishing the significance of [his] gains, petitioner's rehabilitative progress is simply too recent to pass the risk of such gains to the public at this time by the issuance of a certificate to petitioner. Accordingly, cause exists to deny the petition . . . for failure to present evidence sufficiently establishing his rehabilitation"

4. Petitioner has made significant progress since his last appearance before the board more than two years ago. He has completed 80 hours of continuing education, he has communicated with the board, and he has continued in regular psychotherapy with James R. Missett, M.D. In addition to focusing on the psychological and situational reasons that petitioner not only allowed his certificate to lapse but then continued practicing despite being ordered not to do so, petitioner's psychotherapy devoted "considerable attention" to the underlying reasons for petitioner's altering the stipulation that had been sent to him. Dr. Missett attested that petitioner has continued "to work diligently over the course of our therapeutic interactions to implement . . . changes in his behavior. The efforts that he has made have been accompanied by a marked and noticeable change in his attitude towards his work, his marriage, his family, his offense, other professionals with whom he interacts, and the Board of Accountancy." Dr. Missett concluded that petitioner has made excellent use of the time that was afforded him following the denial of his previous petition for reinstatement, that he has accepted responsibility for his actions, that he has learned from all that has transpired since 1997, and that he is capable of assuming the responsibilities that come with licensure as a CPA.

LEGAL CONCLUSIONS

Petitioner has established to the satisfaction of the board that he has rehabilitated himself to the extent that it would not be against the public interest to restore his certificate upon appropriate probationary terms and conditions. As set forth below, one of those conditions – passage of a board-approved ethics examination within six months of the effective date of this decision – is a condition precedent. That is, petitioner's certificate will not be restored until he successfully completes this condition. If petitioner fails to pass the ethics examination within the six-month period, his petition shall be denied.

ORDER

The petition of Paul J. DeGregorio for reinstatement of Certified Public Accountant certificate number 42517 is granted subject to the following condition precedent:

Within six months of the effective date of this decision, petitioner shall take and pass with a score of 90 percent or better a board-approved ethics examination and shall submit to the board proof that he has passed the examination with the required score.

If petitioner fails to pass the examination within six months of the effective date of this decision, his petition shall be denied and his certificate shall not be reinstated.

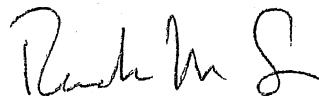
If petitioner passes the examination and submits notification to the board within six months of the effective date of this decision, Certified Public Accountant certificate number 42517 shall be reinstated and petitioner shall be placed on probation to the board for three years upon the following terms and conditions:

1. Petitioner shall obey all federal, California, and other states' and local laws, including those rules relating to the practice of public accountancy in California.
2. Petitioner shall submit, within 10 days of completion of the quarter, written reports to the board on a form obtained from the board. Petitioner shall submit under penalty of perjury such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to petitioner's compliance with all the terms and conditions of probation. Petitioner shall immediately execute all release of information forms as may be required by the board or its representatives.
3. Petitioner shall, during the period of probation, appear in person at interviews/ meetings as directed by the board or its designated representatives, provided such notification is accomplished in a timely manner.

4. Petitioner shall fully comply with the terms and conditions of the probation imposed by the board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of petitioner's compliance with probation terms and conditions.
5. Petitioner shall be subject to, and shall permit, a practice investigation of his professional practice. Such a practice investigation shall be conducted by representatives of the board, provided notification of such review is accomplished in a timely manner.
6. Petitioner shall comply with all final orders resulting from citations issued by the California Board of Accountancy.
7. Petitioner shall complete, and shall provide proper documentation of, completion of a board-approved eight-hour ethics course. Failure to satisfactorily complete the required course no later than 100 days prior to the termination of probation shall constitute a violation of probation.
8. Petitioner shall undergo and continue treatment by a licensed psychotherapist of petitioner's choice and approved by the board or its designee. Treatment shall continue until the treating psychotherapist certifies in writing in a report to the board or its designee that treatment is no longer necessary. Petitioner shall have the treating psychotherapist submit reports to the board at intervals determined by the board or its designee. Petitioner is responsible for costs of treatment and reports.
9. In the event petitioner should leave California to reside or practice outside this state, he must notify the board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the board.
10. If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and impose such discipline as is deemed warranted, including revocation of petitioner's certificate. If an accusation or a petition to revoke probation is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. Upon successful completion of probation, petitioner's certificate will be fully restored.

DATED: February 24, 2005



RENATA M. SOS
President, California Board of Accountancy

**BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

PAUL J. DE GREGORIO
P.O. BOX 6870
San Carlos, CA 94070
CPA Certificate No. 42517

Respondent.

No. AC-1999-20

OAH No. N 1999080366

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its Decision in the above-entitled matter.

This Decision shall become effective on February 27, 2000.

IT IS SO ORDERED.

DATE: January 28, 2000



PRESIDENT
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAUL J. DE GREGORIO
P.O. Box 6870
San Carlos, CA 94070

Board of Accountancy No. CPA 42517,

Respondent.

Case No. AC-1999-20

OAH No. N1999080366

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on December 10, 1999.

Adam Miller, Deputy Attorney General, represented complainant Carol B. Sigmann, Executive Officer of the Board of Accountancy.

Allan R. Moltzen, Jr., Attorney at Law, P.O. Box 7546, Menlo Park, CA 94026-7546, represented respondent Paul J. De Gregorio, who was present.

The matter was submitted on December 10, 1999.

SUMMARY AND ISSUES

Paul J. De Gregorio (respondent) was issued a citation ordering him, among other things, to discontinue engaging in the practice of public accountancy until his license was brought into current status, and to provide evidence that his business signage correctly reflected the singular designation "Certified Public Accountant." Following a hearing on respondent's appeal of the citation, the Board of Accountancy (Board) issued a decision and order affirming these two aspects of the citation. Nine days after the effective date of the Board's decision, it was found that respondent continued to engage in the practice of public accountancy even though his license had not been brought into current status, and that his business signage continued to reflect the plural designation, "C.P.A.'s" [sic]. An accusation against respondent was then issued. During subsequent settlement discussions, respondent orally agreed to terms satisfactory to the Board. A formal settlement agreement setting forth those terms was mailed to respondent. Respondent modified the terms of the settlement

document, signed the agreement and returned it without calling his modifications to the attention of the Board or its counsel. A supplemental accusation was then issued against respondent, charging him with dishonesty and fraud.

The issues raised are: 1) Did respondent fail to comply with the citation in violation of title 16, California Code of Regulations section 95.4; 2) Did respondent violate Business and Professions Code sections 5050 and/or 5120 by continuing to engage in the practice of public accountancy without a valid license; 3) Did respondent violate title 16 California Code of Regulations section 66 by continuing to represent himself with a plural designation; 4) Did respondent fail to timely comply with the Board's continuing education rules in violation of title 16, California Code of Regulations section 94; and 5) Did respondent act dishonestly and fraudulently when he altered the terms of the settlement agreement?

FACTUAL FINDINGS

Chronology of Events

1. On May 10, 1985, the Board issued Certificate number CPA 42517 to respondent. Respondent's certificate is subject to renewal every two years, with the applicable renewal period being March 1 through February 28 of odd numbered years. Respondent's license was in expired status from March 1, 1995 through November 28, 1995 and again from March 1, 1997 through April 26, 1999.

2. On October 7, 1997, the Board's Executive Officer Carol B. Sigmann (complainant) issued Citation No. CT-98-7 to respondent. The following violations were cited:

Item 1: Business and Professions Code section 5050—engaging in the practice of public accountancy without a valid license during the periods March 1, 1995 through November 28, 1995 and March 1, 1997 through the date of the citation.

For this item, respondent was assessed an administrative fine of \$1500 and was issued an order of abatement to "discontinue engaging in the practice of public accountancy until such time that CPA license 42517 is brought to a current status with the appropriate continuing education hours reported."

Item 2: Title 16, California Code of Regulations section 66—improper use of a plural, rather than singular, designation in the name "De Gregorio & Co., Certified Public Accountants" during the period from at least June 1994 through September 1997.

For this item, respondent was assessed an administrative fine of \$750, was issued an order of abatement to discontinue practicing under the name "De Gregorio & Co., Certified Public Accountants" until he was in compliance with title 16, California Code of Regulations section 67, and was issued an order of correction to submit within 30 days revised letterhead, business cards, phone directory and business signage to show a change to the singular designation "Certified Public Accountant."

Item 3: Title 16, California Code of Regulations section 3—failure to notify the Board of his change of address.

For this item, respondent was assessed an administrative fine of \$250 and was ordered to submit a change of address to the Board.

3. Respondent appealed the citation and a hearing was held before the undersigned administrative law judge on October 13, 1998. A proposed decision was issued on October 29, 1998. As to Item 1 of the citation, it was found that, as alleged, respondent had engaged in the practice of public accountancy without a valid license during the periods March 1, 1995 through November 28, 1995 and March 1, 1997 through the date of the citation. It was further found that respondent had attempted to renew his license by submitting a delinquent renewal application on November 7, 1998, but that he had listed only 75 continuing education hours within the two year renewal period, five short of the 80 hours required; that respondent subsequently "was given numerous opportunities" to provide the necessary verification of his continuing education hours to allow renewal of his certificate, "but repeatedly failed to do so;" and that, eventually, the Board had notified respondent that it was able to accept only 51 of the continuing education hours he had claimed. As to Item 2, it was found that respondent had revised his letterhead, business cards and phone directory to show a change to the singular designation "Certified Public Accountant" but that the business signage had not been corrected, continuing to read, "De Gregorio & Co., C.P.A.'s." It was also found that Item 3 had been withdrawn by the Board. The proposed decision contained the following order:

Citation No. CT-98-7 issued to respondent Paul J. De Gregorio is modified as follows:

1. The order of correction for Item 2 is amended to read as follows:

Within 30 days of the effective date of this decision respondent shall submit to the Board evidence that all letterhead, business cards, phone directories and business signage correctly reflect the singular designation "Certified Public Accountant."

2. The administrative fine assessed for Item 2 is reduced to \$500.

3. The violation cited, order of correction and administrative fine assessed for Item 3 are dismissed.

4. The total administrative fine assessed for Items 1 and 2 is reduced to \$1,250.

In all other respects, including the order of abatement requiring respondent to discontinue engaging in the practice of public accountancy in California until certificate number CPA 42517 is brought into current status with the appropriate continuing education hours reported, the citation is affirmed.

Should respondent fail to fully comply with this order within 30 days of the effective date of this decision, or such later date as the Board may determine, action to revoke or suspend respondent's license may be taken pursuant to Title 16, California Code of Regulations section 95.4.

4. The Board adopted the administrative law judge's proposed decision on December 7, 1998. On the same day, complainant sent the Board's decision to respondent with a cover letter reading in its entirety (emphasis in original):

Dear Mr. De Gregorio:

Enclosed is a copy of the Decision and Order that relates to Citation CT-98-7. Said Decision and Order was adopted by the Board and is effective January 6, 1999.

Pursuant to the findings contained within the Proposed Decision, Citation No. CT-98-7 is modified as follows:

- The administrative fine assessed for Item 1, Business and Professions Code, Section 5050, is **reduced to \$750**.
- The administrative fine assessed for Item 2, California Code of Regulations, Section 66, is **reduced to \$500**.
- The order of correction for Item 2 is amended to read as follows:

By February 5, 1999, you must submit to the Board evidence that all letterhead, business cards, phone directories and business signage correctly reflect the singular designation "Certified Public Accountant."

- The violation cited, order of correction and administrative fine assessed for Item 3, California Code of Regulations, Section 3, are dismissed.

In all other respects, including the order of abatement requiring you to discontinue engaging in the practice of public accountancy in California until your certificate (CPA 43517), is brought into current status with the appropriate continuing education hours reported, the citation is affirmed.

This notice hereby advises that the administrative fine, totaling \$1250, and the order of correction for Item No. 2, are due in their entirety no later than March 7, 1999.

Failure to fully comply with this order by March 7, 1999, will result in the Board taking action to revoke or suspend your license pursuant to Title 16, California Code of Regulations section 95.4.

If you have any questions concerning this matter, please contact Sara Narvaez-Smith, Citation and Fine Program Analyst, at (916) 263-3968.

5. On January 15, 1999, nine days after the effective date of the Board's decision on Citation No. CT-98-7, Board investigator Stephen DeRose made an unannounced visit to respondent's place of business to check on respondent's compliance with the order. DeRose found that the street-level signs at the front and rear of the building continued to read "De Gregorio & Co., C.P.A.'s." He also found that respondent, who had not yet renewed his certificate, was continuing to practice public accountancy. DeRose spoke with respondent at this visit. As to the sign, respondent said he had not gotten around to it and would make it a priority. As to practicing without a valid certificate, respondent said no one had told him to stop. DeRose and respondent also discussed continuing education documentation. Respondent said he had already provided the Board with 75 hours for the March 1, 1995-February 28, 1997 renewal period. DeRose reminded him that the Board had disqualified a large number of those hours due to lack of documentation and asked respondent what intentions he had to make up his continuing education hours. Respondent said it would serve no purpose since the Board would just disallow them again.

DeRose spoke to respondent again in a telephone conversation a week or two later. Respondent said he did not think his practicing without a valid license was a "big deal" and that he felt the Board was picking on him. As to continuing education hours, respondent told DeRose he had additional hours he wished to provide. DeRose told respondent to send them in and he would forward them to Sara Narvaez-Smith, who would review them and determine what would be allowed.

6. On February 4, 1999, respondent sent to Narvaez-Smith a check for \$1,250 and a work order showing that on January 22, 1999 respondent had instructed a sign company to modify the signs at the front and rear of the building. In the letter forwarding these documents, respondent acknowledged that he had previously provided documentary support

for only 68 continuing education hours for the period ending February 28, 1997, but that he had testified under penalty of perjury to actually performing 75 hours, and that he was including documentation of an additional eight hours undertaken after February 28, 1997 that he understood Narvaez-Smith would credit him with.

7. On a date not established, respondent submitted a renewal application for the period beginning March 1, 1999. Upon a determination that respondent had completed at least 80 continuing education hours for the renewal period March 1, 1997 through February 28, 1999, respondent's license was renewed by the Board effective April 27, 1999.

8. On July 23, 1999, complainant filed an accusation against respondent, charging that respondent had violated:

a) Title 16, California Code of Regulations section 95.4 by failing to comply with Citation No. CT-98-7;

b) Business and Professions Code section 5050 by continuing to engage in the practice of public accountancy without a valid license;

c) Title 16, California Code of Regulations section 66 by continuing to represent himself in a plural manner as "De Gregorio & Co., Certified Public Accountants;" and

d) Title 16, California Code of Regulations section 94 by failing to timely comply with the Board's continuing education rules.

9. Sometime after the filing of the accusation, respondent called complainant (Board Executive Officer Carol B. Sigmann) to discuss resolution of the matter. Complainant then asked the Board's Chief of Enforcement, Gregory Newington, to participate in the discussion. A conference call between complainant, Newington and respondent took place in late August 1999. During this conversation, which lasted an hour to an hour and a half, the allegations of the accusation and possible means of resolution were discussed. One of respondent's key concerns related to the issue of publication of any disciplinary action in the Board's newsletter, *Update*, and in press releases. Respondent was dissatisfied when advised by Newington that the Board's clear policy was that all disciplinary actions would be published in *Update* and news releases would be issued. Respondent said that publication of his discipline at the time of citation had caused him some hardship, with at least one client filing a civil suit against him. He said that further publication, "is going to kill me." Newington told respondent that publication was nonnegotiable, and that there was "absolutely no room for any movement" on this issue. Respondent was given the same response when he raised the possibility of his dictating or controlling the language of any publication. These points were repeated by Newington several times during the conversation, and were confirmed by complainant.

The conference call ended with no firm resolution of the matter, but with a "skeletal outline" of terms the Board would accept. Respondent was asked to call Newington within a week to let him know if he was interested in the proposed terms. When respondent did not call Newington, Newington called respondent. Respondent asked for a personal meeting with Newington to discuss settlement.

Respondent met with Newington in the latter's office in mid-September 1999. The meeting lasted around two hours. The events leading to the accusation were discussed. Respondent took the position that the Board was overreacting to an insignificant event and that the whole thing should go away. In discussing settlement terms, respondent again raised the publication issue since "everything's negotiable; the bottom line's never the bottom line." Respondent repeatedly sought to prevent publication or to control the language of the published notice. Newington repeatedly told respondent that the issue was not negotiable. At one point, Newington became irritated at respondent's repeated attempts to revisit the issue and told him the meeting was over because he was not listening to what Newington was telling him.

The meeting was concluded with a resolution that did not include any terms addressing publication. Newington summarized the terms and asked respondent to specifically assent to them before the Board incurred legal fees to reduce the agreement to writing. Respondent's final words were, "I'm ready to take my medicine, doctor, but this is going to kill me."

10. Newington then put the terms of the agreement into a memo that was sent to the Department of Justice to be drafted into a formal proposal. On September 24, 1999, Deputy Attorney General Adam Miller sent respondent the formal agreement with a cover letter that read, in pertinent part:

Dear Mr. DeGregorio:

I have been informed that you have reached an agreement in principle with the staff of the Board of Accountancy (the "Board") as to a stipulated settlement of the above matter. The terms of the stipulation are as follows:

[Terms omitted.]

Accordingly, enclosed is a draft stipulation incorporating these terms. If it is acceptable, please date and sign it where indicated, and return it to me as soon as possible. As soon as I received a signed stipulation back from you, I will take off calendar the hearing presently scheduled for October 19, 1999. . . .

The draft stipulation consisted of seven pages, including an Order with ten numbered probationary conditions, and an eighth page entitled "Decision and Order of the Board of Accountancy."

11. On October 2, 1999, respondent sent to Miller a letter reading:

Dear Mr. Miller:

Pursuant to your letter to me dated September 24, 1999, the terms and conditions per the enclosed stipulation are acceptable to me. Accordingly, I have signed the enclosed stipulation.

Pursuant to your letter, upon receipt of the enclosed stipulation, you will take off calendar the hearing currently scheduled for October 19, 1999. I will assume this detail will be handled by you according to your written representation. Please inform me if otherwise.

Should you have any questions regarding the enclosed stipulation, please notify me.

Enclosed with this letter was a document that appeared, on its face, to be the stipulation Miller had sent to respondent. However, respondent had modified the stipulation to add an additional condition of probation. This new condition, numbered 10 (the original condition 10 was renumbered as 11), was entitled "DISCLOSURE," and began, "For settlement purposes, the parties agree that the following language will be used in the California Board of Accountancy Update with regard to this stipulation." There then followed 14 lines summarizing the basis of the discipline and the probationary terms. Respondent modified the stipulation by retyping pages 6 and 7 of the original, using the same type-face and pleading paper used in the original. Because of the additional text, the block for Miller's signature was pushed back from page 6 of the original to page 7 of the modified version. Like the original version, the modified stipulation consisted of seven pages plus the eighth page entitled "Decision and Order of the Board of Accountancy."

12. Miller signed the stipulation returned by respondent on October 5, 1999 and forwarded it to complainant. Although no direct evidence on this point was submitted, the undisputed implication is that Miller signed the modified stipulation without realizing a new term had been inserted, or that the space for his signature had been moved to a different page than on the original. When complainant saw the language of the "Disclosure" condition, she sent a memo to Newington asking how this language came to be included in the stipulation. He then contacted Miller. On October 26, 1999, Miller sent respondent a letter advising him that "the document that you recently submitted to this office attached to your letter of October 2, 1999, will not be submitted to the Board," that the settlement proposal was withdrawn, that a First Supplemental Accusation had been filed, and that a new hearing date would be set. The supplemental accusation charged respondent with general unprofessional conduct in

violation of Business and Professions Code section 5100, unprofessional conduct for acting dishonestly and fraudulently in violation of section 5100(c) and unprofessional conduct in knowingly preparing and disseminating false, fraudulent or materially misleading reports or information in violation of section 5100(i). All three charges related to respondent's alteration of the stipulation that had been sent to him. The supplemental accusation further charged respondent with unprofessional conduct in violation of section 5100(e), in conjunction with section 5120, for engaging in the practice of public accounting without a valid license as set forth in the original accusation.

Findings re: Accusation

13. As set forth in Finding 8, respondent was charged in the accusation with failing to comply with Citation No. CT-98-7; and with continuing to engage in the practice of public accountancy without a valid license, continuing to represent himself in a plural manner and failing to timely comply with the Board's continuing education rules. Each of these latter three allegations were cited as independent causes for disciplinary action. Although the accusation is not entirely clear, it appears that each of these three matters serve as separate bases for the allegation of failure to comply with the citation, or more properly, the Board's order modifying and affirming the citation.

Practicing Without a Valid License

14. When respondent received the Board's decision and complainant's cover letter dated December 7, 1998 he did not read the entire decision, but simply "scanned through the order." Respondent asserts that as he read the decision and cover letter, neither required him to cease practicing as a CPA. When asked at the hearing about the paragraph in the cover letter advising him that "[i]n all other respects, including the order of abatement requiring you to discontinue engaging in the practice of public accountancy . . . the citation is affirmed," respondent testified he had focused instead on the bold-faced paragraph telling him he had until February 5 to change plural designations to singular. Respondent testified that he felt the purpose of the citation hearing had been to "fine me and correct the things I needed to correct and move on," and that, as he understood it, he was entitled to continue to hold himself out as a CPA and to perform CPA services.

15. Respondent's testimony is disingenuous at best. The citation contained an order of abatement requiring respondent to "discontinue engaging in the practice of public accountancy until such time that CPA license 42517 is brought to a current status with the appropriate continuing education hours reported." The order in the Board's decision following respondent's appeal specifically "affirmed" this order of abatement. And complainant's cover letter that accompanied the decision again specifically noted that this order of abatement had been affirmed and that respondent was to "discontinue engaging in the practice of public accountancy." It is simply inconceivable that respondent could not have known he was required to stop practicing as a CPA until he brought his license into current status.

16. Respondent maintains that the Board's representatives had led him to believe that there was no way he could "make up" the continuing education hours he was short for the March 1995-February 1997 renewal period, and that he therefore believed it was impossible for him to report the "appropriate" continuing education hours necessary to bring his license into current status. But respondent's ability to make up the missing hours from the earlier renewal period is irrelevant to his continued practice. Respondent was ordered to discontinue engaging in the practice of accountancy until he brought his license into "current status." Whether he did that by making up the missing hours from the March 1995-February 1997 renewal period or by demonstrating sufficient continuing education hours for the March 1997-February 1999 renewal period did not matter. Until he did one or the other, respondent did not have a valid CPA license and could not therefore legally practice public accountancy. It was not until April 27, 1999 that respondent's CPA license was brought into current status. In the meantime, he continued to practice public accountancy in violation of both the law and the Board's order that became effective January 6, 1999.

17. The argument that complainant's cover letter gave respondent until March 7, 1999 to comply with the Board's order is unavailing. The clear intent of both the Board's order and complainant's cover letter was that respondent was to immediately cease practicing public accountancy since he did not have a valid license, with the March 7 deadline relating only to respondent's paying the fine and complying with the order of correction for Item No. 2 (plural designation). But even if the cover letter could be construed to allow respondent to continue practicing illegally for an additional 60 days (and it is found that this would not be a reasonable construction), respondent's license was not brought into current status until more than seven weeks after that.

Plural Designation

18. Respondent testified that because he had changed his letterhead and business cards from plural to singular designations well before the citation hearing, he felt by the time he received the Board's decision he had already complied with the requirement that he cease using a plural designation. This, of course, ignores the fact that the signs at the front and rear of respondent's building continued to use a plural designation, "C.P.A.'s."

19. But complainant's cover letter was confusing in the way it described how respondent was to comply with the amended order of correction for Item 2 of the citation. On one hand, the bold-faced paragraph instructed respondent that he needed to submit evidence of a change to singular usage by February 5, 1999. On the other hand, a later paragraph informed respondent that the fine and order of correction were due no later than March 7. In either case, the fact that respondent had not yet changed his signage to a singular designation by the time of DeRose's visit on January 15, 1999 did not demonstrate a failure to comply with Citation No. CT-98-7 since respondent had been given until at least February 5, 1999 to change his signs. Respondent did take steps to change the signs on January 22, 1999, thereby complying with the Board's order.

20. And, because respondent had been given at least until February 5, 1999 to change his signs to a singular designation, respondent's failure to have changed the signs prior to DeRose's January 15, 1999 visit cannot give rise to an independent cause for discipline. Respondent was entitled to rely upon the representation that he had until either February 5 or March 7 to change his signs. He did, in fact, change the signs within that time frame.

Timely Compliance with Continuing Education Rules

21. As indicated in Finding 3, the decision of the Board sent to respondent on December 7, 1998 required him to bring his license into current status "with the appropriate continuing education hours reported" Complainant's cover letter used the same language. But the time within which respondent was to comply with the Board's order was, again, somewhat confusing. While the clear intent of the both the Board's order and complainant's cover letter was that respondent was to immediately cease practicing public accountancy because he did not have a valid license, respondent was not also immediately required to comply with the Board's continuing education rules. Nor was respondent required to comply with the continuing education rules by March 7, 1999. As indicated in Finding 17, the March 7 deadline set forth in complainant's cover letter for respondent to "fully comply" with the Board's order related only to payment of fines and correcting plural designations. Thus, although respondent did not provide the Board sufficient continuing education hours to justify renewal of his license until after this date, it cannot be found that he failed, as alleged, to "timely" comply with the Board's continuing education rules since no time limit was ever set. Had respondent discontinued practicing public accountancy as he had been ordered, he theoretically could have taken as much time as he wanted (or was allowed by law) to provide the Board with sufficient continuing education hours to justify renewal of his license.

Findings re: Supplemental Accusation

22. As set forth in Finding 12, the supplemental accusation charged respondent with general unprofessional conduct, dishonesty and fraud, knowingly preparing and disseminating false, fraudulent or materially misleading reports or information and engaging in the practice of public accounting without a valid license. The first three matters alleged related to respondent's alteration of the stipulation that had been sent to him. The allegation of engaging in the practice of public accounting without a valid license was not a new charge; it merely referred to the same charge in the original action. Although no new factual allegations were made, a new statutory cause for discipline was alleged.

Alteration of Stipulation

23. The manner in which respondent altered the stipulation that had been sent to him is described in Finding 11. Complainant asserts that respondent's altering the stipulation in the way he did, and without providing notice in either his cover letter or on the stipulation itself (by way of initials or other notation), shows that respondent's intent was to prevent discovery of the alteration so that complainant would take the scheduled hearing off calendar

and the Board would adopt the stipulation. In fact, in reliance upon respondent's representations in his cover letter and his signature on the stipulation, which had not yet been discovered to have been modified, the matter was taken off calendar by complainant's counsel.

Respondent denies that his intent was to mislead, defraud or "slip one by" the Board. Rather, he maintains that when he retyped pages 6 and 7 of the stipulation in order to add the "Disclosure" provision he "wanted to keep it the same," and simply used his regular software and the pleading paper available in that software. Although respondent now concedes that the implication of the first paragraph of his cover letter of October 2, 1999 was that he was returning to Miller the same stipulation that Miller had sent to him, he asserts that was not his intention.

24. Respondent testified that at about the same time he received the stipulation drafted by Miller, he received a copy of *Update* and saw in it language relating to another licensee's discipline that he felt was acceptable to him. At the time respondent knew, for he had been told so repeatedly by Newington, that the issue of publication was nonnegotiable as far as complainant was concerned and that he would not be permitted to dictate or control the language of that publication. Nevertheless, he added the "Disclosure" provision to the stipulation in the hopes that Newington would reconsider. He basically used the language he had seen in *Update* with a few modifications, believing this language would be acceptable to the Board since it was used in another case.

25. Despite his denials, the evidence is clear that respondent intended to deceive complainant and the Board by not pointing out in any way the modifications he had made to the stipulation—modifications he had specifically been told would not be acceptable. The manner in which respondent modified the stipulation itself was deceptive—using the same type-face and pleading paper as in the original, keeping the total number of pages the same—and respondent's cover letter accompanying the modified stipulation simply added to that deception, completely concealing the fact that any changes had been made. Anyone reading that letter would be led to believe that respondent had accepted the terms of the stipulation that had been sent to him and had signed and returned it. No other reading of the letter is possible. Respondent's intent was to defraud, and he succeeded. In reliance upon respondent's cover letter and signature on the stipulation, the case was taken off calendar. It was not until complainant herself reviewed the signed stipulation that respondent's fraud was discovered. Thus, the necessary elements of fraud—“(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage”—are all present here. (See *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1108.)

Practicing Without a Valid License

26. Because no new factual allegations were made as to this charge, the matters set forth in Findings 14 through 17 are dispositive and need not be repeated. Although Business and Professions Code section 5120 permits the Board to refer individuals who practice with-

out a license for criminal prosecution, no evidence of such a referral, or of a criminal prosecution, was presented.

Other Matters

27. Two of respondent's clients testified, without contradiction, that respondent has impressed them as a highly-qualified, competent and dedicated CPA. An attorney with whom respondent has shared some clients expressed a similar view in a letter. Neither the attorney nor one of the clients commented upon respondent's ethics or reputation for honesty. The one client who did, testified that in his opinion respondent was very ethical. This witness conceded, however, that modifying a contract document without providing notice to the other parties to the contract would be unethical.

Cost Recovery

28. Complainant submitted prima facie evidence showing that the Board had incurred costs of \$9,516.59 in the investigation and prosecution of this matter. Those costs included \$4,341.59 in investigative costs (43 hours at \$67.53/hour and 20 hours at \$71.89/hour) and attorney fees of \$5,175.00 (51.75 hours at \$100/hour). Respondent did not dispute these costs in any way. The costs are found to be reasonable. Respondent presented no evidence to show that he would be unable to pay these costs or that payment of them would cause him an unreasonable and irremediable financial hardship.

LEGAL CONCLUSIONS

Conclusions re: Accusation

Compliance with Citation

1. As set forth in Findings 14 through 17, respondent violated title 16, California Code of Regulations section 95.4 by failing to comply with the Board's final order in Citation No. CT-87-7. Cause for disciplinary action against respondent thereby exists pursuant to both that section and Business and Professions Code section 5100(f) (unprofessional conduct—willful violation of accountancy laws or the Board's rules and regulations).

Practicing Without a Valid License

2. As set forth in Findings 14 through 17, respondent violated Business and Professions Code section 5050 by continuing to engage in the practice of public accountancy without a valid license. Cause for disciplinary action against respondent thereby exists pursuant to Business and Professions Code section 5100(f).

Plural Designation

3. As set forth in Findings 18 through 20, respondent's failure to change his business signage from a plural to a singular designation prior to January 22, 1999 did not constitute either a violation of title 16, California Code of Regulations section 66 or failure to comply with the Board's order in Citation No. CT-87-7. No cause for disciplinary action thereby exists pursuant to either Business and Professions Code section 5100(f) or title 16, California Code of Regulations section 95.4.

Timely Compliance with Continuing Education Rules

4. As set forth in Finding 21, respondent did not fail to timely comply with the Board's continuing education rules. He did not, therefore, violate title 16, California Code of Regulations section 94. No cause for disciplinary action thereby exists pursuant to Business and Professions Code section 5100(f).

Conclusions re: Supplemental Accusation

Alteration of Stipulation

5. Business and Professions Code section 5100(c) provides that dishonesty or fraud "in the practice of public accountancy" constitutes unprofessional conduct and a cause for disciplinary action. As set forth in Findings 23 to 25, respondent acted dishonestly and fraudulently when he altered and returned the stipulation that had been sent to him without any notice of his alterations. Because respondent's dishonest and fraudulent act occurred in negotiations with the licensing entity in relation to respondent's license, it is deemed to have occurred in the practice of public accountancy. Cause for disciplinary action against respondent thereby exists pursuant to Business and Professions Code section 5100(c).

Even if respondent's dishonest and fraudulent acts could be construed not to have occurred "in the practice of public accountancy," and therefore not within the ambit of section 5100(c), respondent would still be subject to disciplinary action for those acts under the general provisions of section 5100, which indicates that actionable unprofessional conduct is not limited to the specific causes listed in subsections (a) through (j). A licensee's dishonest and fraudulent actions toward the licensing entity itself surely establishes a sufficient nexus for disciplinary action.

6. Business and Professions Code section 5100(i) provides that "Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports or information" constitutes unprofessional conduct and a cause for disciplinary action. The plain reading of this statute leads to the conclusion that the word "financial" modifies not only "statements," but also "reports" and "information." Thus, cause for disciplinary action under this section would exist only if a licensee knowingly prepares, publishes or disseminates false, fraudulent or materially misleading financial statements, finan-

cial reports or financial information. That did not occur in this case. Respondent's fraud related solely to his personal license. No cause for discipline thereby exists pursuant to Business and Professions Code section 5100(i).

Practicing Without a Valid License

7. Business and Professions Code section 5100(e) provides that cause for disciplinary action for unprofessional conduct exists against a licensee who violates section 5120. Section 5120 provides that, "Any person who violates Article 3 (commencing with section 5050) is guilty of a misdemeanor, . . ." and that the Board may certify the facts for prosecution. As set forth in Conclusion 2, respondent violated Business and Professions Code section 5050 by continuing to engage in the practice of public accountancy without a valid license. Even though no evidence was presented that the Board referred respondent for prosecution, or that he was prosecuted for or convicted of a misdemeanor, he nevertheless violated section 5120 by violating section 5050. Cause for disciplinary action against respondent therefore exists pursuant to Business and Professions Code section 5100(e).

Penalty

8. Respondent's engaging in the practice of public accountancy without a license between January 6 and April 26, 1999 is, by itself, cause for revocation of his license. Respondent's failure to comply with the Board's decision and order affirming Citation No. CT-87-7 by failing to cease practicing public accountancy until he brought his license into current status is a separate, and also by itself sufficient, cause for revocation of respondent's license. Respondent's attitude toward the practice of accountancy without a license is clear: he described his continued practice without a license to DeRose as not a "big deal" and to Newington as an insignificant event to which the Board had overreacted. Respondent's attitude toward the Board's attempt to regulate his illegal practice is equally clear: despite receiving both the Board's decision affirming Citation No. CT-87-7 and a cover letter from complainant ordering him to "discontinue engaging in the practice of public accountancy in California," respondent told DeRose that he continued to practice because no one had told him to stop. Considering this, it is determined that staying revocation and placing respondent on probation to the Board would be of little avail. There is simply no indication that respondent would comply with any probationary terms.

Respondent's dishonest and fraudulent actions relating to his alteration and return of the stipulation that had been sent to him is also, by itself, cause for revocation of his license. Certainly, the practice of public accountancy demands practitioners who are honest and ethical. Respondent's actions have proven him to be otherwise. Protection of the public interest requires nothing less than revocation of his license.

Cost Recovery

9. Cause exists, pursuant to Business and Professions Code section 5107, to require respondent to pay to the Board the costs of investigation and prosecution in the amount


of \$9,516.59. Although section 5107(e) permits the cost award to be reduced or eliminated upon a showing that respondent would be unable to pay the costs or that payment would cause him an unreasonable and irremediable financial hardship that cannot be remedied through a payment plan, no such evidence was presented.

ORDER

1. Certificate number CPA 42517 issued to respondent Paul J. De Gregorio is revoked pursuant to Conclusions 1, 2, 5 and 7, separately and for each of them.

2. Respondent Paul J. De Gregorio shall pay the Board the costs of investigation and prosecution in the amount of \$9,516.59 within 120 days after the effective date of this decision unless time for payment is extended by the Board.

DATED: December 22, 1999



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation)
12 Against:) NO. AC-1999-20
) OAH Case No. N-1999080366
13 PAUL J. DEGREGORIO)
P.O. Box 6870) FIRST SUPPLEMENTAL
14 San Carlos, CA 94070) ACCUSATION
)
15 Board of Accountancy)
No. CPA 42517)
16)
Respondent.)
17)

18 Complainant Carol B. Sigmann, as cause for disciplinary
19 action, alleges:

20 1. Complainant is the Executive Officer of the California
21 Board of Accountancy ("Board") and makes and files this First
22 Supplemental Accusation solely in her official capacity.
23

24 **LICENSE INFORMATION**

25 2. On or about May 10, 1985, Board Certificate number CPA
26 42517 (the "Certificate") was issued by the Board to Paul J.
27 DeGregorio ("respondent"). The certificate is subject to renewal

1 every two years pursuant to California Business and Professions
2 Code (hereinafter "Code") section 5070.6.

3 3. The applicable renewal period for the Certificate is
4 March 1 through February 28 of odd numbered years. The Board's
5 licensing records were transferred to the Department of Consumer
6 Affairs' centralized computer system in March 1989. As a result,
7 the underlying documentation related to license history prior to
8 that date is unavailable. The computerized records reflect that,
9 in March 1989, the Certificate was in an active status.

10 4. The Certificate expired and was not valid during the
11 period of March 1, 1995 through November 28, 1995, for the
12 following reasons:

13 a. The renewal fee, required by Code section 5070.5,
14 was not paid;

15 b. Declaration of compliance with continuing
16 education regulations was not submitted.

17 5. The Certificate was renewed effective November 29, 1995,
18 through February 28, 1997, upon receipt of the renewal fee and
19 evidence of compliance with the continuing education regulations
20 from respondent.

21 6. The Certificate expired and was not valid during the
22 period of March 1, 1997, through April 26, 1999, for the
23 following reasons:

24 a. The renewal fee, required by Code Section 5070.5,
25 was not paid;

26 b. Declaration of compliance with continuing

27 //

1 education regulations was not submitted.

2 7. The Certificate was renewed effective April 27, 1999,
3 upon receipt of the renewal fee, and declaration of compliance
4 with continuing education requirements by respondent.

5 8. On July 23, 1999, an accusation in Case number
6 AC-1999-20 was filed by the Board (the "Accusation"). The
7 Accusation is hereby incorporated by reference herein as though
8 set forth in full.

9 STATUTES AND REGULATIONS

10 9. Code section 5100 provides that the Board may revoke,
11 suspend or refuse to renew any permit or certificate issued by
12 the Board, or may censure the holder of any such permit or
13 certificate, for unprofessional conduct, including but not
14 limited to:

15 "(c) Dishonesty, fraud, or gross negligence in the practice
16 of public accountancy ...

17 (e) Violation of Section 5120. ...

18 (i) Knowing preparation, publication or dissemination of
19 false, fraudulent, or materially misleading financial
20 statements, reports, or information."

21 10. Code section 5050 provides that: "No person shall
22 engage in the practice of public accountancy in this State unless
23 such person is the holder of a valid permit to practice public
24 accountancy issued by the board..."

25 11. Code section 5120 provides that "Any person who
26 violates Article 3 (commencing with Section 5050) is guilty of a
27 misdemeanor, punishable by imprisonment for not more than six

1 months, or by a fine of not more than one thousand dollars
2 (\$1,000), or both."

3 12. Code section 5051 defines the practice of "public
4 accountancy" to include one who:

5 "(a) Holds himself or herself out to the public in any manner as
6 one skilled in the knowledge, science and practice of accounting,
7 and as qualified and ready to render professional service therein
8 as a public accountant for compensation."

9 13. Title 16 of the California Code of Regulations, section
10 99, provides that for purposes of revocation of a license, an
11 "act shall be considered to be substantially related to the
12 qualifications, functions or duties of a certified public
13 accountant or public accountant if to a substantial degree it
14 evidences present or potential unfitness of a certified public
15 accountant or public accountant to perform the functions
16 authorized by his certificate or permit in a manner consistent
17 with the public health, safety, or welfare."

18 14. Section 5107 of the Business and Professions Code
19 provides that the executive officer of the Board may request the
20 administrative law judge as part of the proposed decision in a
21 disciplinary proceeding to direct any holder of a certificate
22 found guilty of unprofessional conduct in violation of
23 subdivisions (b), (c), (i), or (j) of Section 5100, to pay to the
24 Board all reasonable costs of investigation and prosecution of
25 the case, including, but not limited to, attorneys' fees.

26 15. Under Code section 118(b), the suspension, expiration,
27 or forfeiture by operation of law of a license issued by the

1 Board, or its suspension, forfeiture, or cancellation by order of
2 the Board or by order of a court of law, or its surrender without
3 the written consent of the Board, shall not, during any period in
4 which it may be renewed, restored, reissued, or reinstated,
5 deprive the Board of its authority to institute or continue a
6 disciplinary proceeding against the licensee upon any ground
7 provided by law or to enter an order suspending or revoking the
8 license or otherwise taking disciplinary action against the
9 license on any such ground.

10 CAUSES FOR DISCIPLINE

11 16. Respondent Paul J. DeGregorio is subject to
12 disciplinary action for unprofessional conduct in violation of
13 Code section 5100. The circumstances are as follows:

14 A. Following filing and service of the Accusation,
15 respondent contacted the Board and requested settlement
16 terms. On or about September 13, 1999, respondent met with
17 Greg Newington, the Chief of the Board's Enforcement
18 Division, acting on behalf of Complainant (the "Meeting").

19 B. During the Meeting, settlement terms were discussed,
20 and the participants reached an agreement in principle as to
21 terms for a stipulated settlement¹. The terms were to be
22 memorialized in a "Stipulated Settlement" to be drafted by

23
24 1. Complainant does not intend to argue that respondent
25 in negotiating with Complainant made any admissions as to the
26 validity of the allegations contained within the Accusation.
27 However, in order to set forth the gravamen of the First
Supplemental Accusation, it is necessary to articulate certain
details concerning the negotiations between respondent and
Complainant towards a potential stipulated settlement.

1 Complainant's attorneys, and, if accepted by respondent,
2 would be forwarded to the Board for its consideration.

3 C. During the Meeting respondent requested that a term be
4 added that would permit him to dictate the wording that
5 would be used by the Board in disclosing any discipline
6 imposed against him, in the Board's publications. At the
7 Meeting, Mr. Newington specifically advised respondent that
8 this term was unacceptable, and would not be permitted in
9 any stipulated settlement.

10 D. Following the Meeting, a stipulated settlement document
11 was drafted by Complainant's attorneys (the "Document").
12 The Document was transmitted to respondent by letter on or
13 about September 24, 1999, for respondent's review and
14 approval.

15 E. On or about October 2, 1999, respondent sent a letter
16 to Complainant's attorneys, on his professional letterhead,
17 which was received on or about October 4, 1999.
18 Respondent's letter stated that "Pursuant to your letter to
19 me dated September 24, 1999, the terms and conditions per
20 the enclosed stipulation are acceptable to me. Accordingly,
21 I have signed the enclosed stipulation."

22 F. Enclosed with respondent's letter dated October 2,
23 1999, was apparently the Document that had been previously
24 transmitted to respondent by Complainant's attorneys.
25 However, the Document had been altered by respondent to
26 include a new paragraph 10 under the terms and conditions of
27 probation, entitled "Disclosure." In this new "Disclosure"

1 paragraph, respondent wrote that: "the parties agree that
2 the following language will be used in the California Board
3 of Accountancy *Update* with regard to this stipulation.
4 For purposes of settlement, Respondent admits that he failed
5 to provide, pursuant to Citation CT-98-7, documentation for
6 twenty five hours of continuing education for the period
7 ended February 28, 1997. The parties agree that failure to
8 provide such documentation resulted in the Respondent
9 practicing without a valid license."

10 G. Although the Document had been substantively and
11 materially altered by respondent, it looked so much like the
12 original Document, that it would require extensive scrutiny
13 of the entire Document to detect the differences. The
14 alterations were made in identical typeface font, style, and
15 size, as the original Document, and the altered Document had
16 been re-formatted to match to original Document. Respondent
17 did not initial the alterations or otherwise call attention
18 to them.

19 H. Upon receiving the altered Document, signed and dated
20 by respondent, and in reliance upon the express and/or
21 implied representations by respondent that it was the
22 original Document, Complainant's attorneys transmitted the
23 altered Document to Complainant for review and presentation
24 to the Board, and took off calendar a hearing which had
25 previously been scheduled with the Office of Administrative
26 Hearings. Only after careful review by the Complainant was
27 the new language detected.

1 I. Respondent intended for the altered Document to be
2 submitted to the Board and be adopted, respondent intended
3 to bind the Board to the new terms that he added, and
4 respondent intended for Complainant to take off calendar the
5 impending hearing. Respondent's conduct in altering and
6 transmitting the altered Document evidenced his present or
7 potential unfitness to perform the functions of a certified
8 public accountant in a manner consistent with the public
9 health, safety, or welfare.

10 17. Respondent is further subject to discipline for
11 unprofessional conduct in violation of Code section 5100(c), in
12 that he acted dishonestly and fraudulently, in the practice of
13 public accountancy, as set forth above in paragraph 16.

14 18. Respondent is further subject to discipline for
15 unprofessional conduct in violation of Code section 5100(i), in
16 that he knowingly prepared and disseminated false, fraudulent, or
17 materially misleading reports or information, as set forth above
18 in paragraph 16.

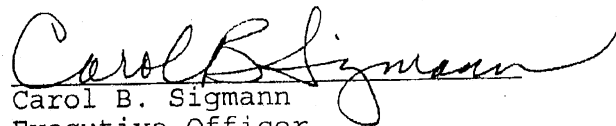
19 19. Respondent is further subject to discipline for
20 unprofessional conduct in violation of Code section 5100(e) taken
21 together with Code section 5120, in that respondent engaged in
22 the practice of public accounting without a valid license, as set
23 forth in paragraph 17 of the Accusation.

24 PRAYER

25 WHEREFORE, Complainant requests that the Board hold a
26 hearing on the matters alleged herein, and that following said
27 hearing, the Board issue a decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Certificate Number 42517, issued to Paul J. DeGregorio;
2. Awarding the Board costs as provided by statute; and
3. Taking such other and further action as the Board deems proper.

DATED: October 22, 1999



Carol B. Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

03541110-SF1999AD0366

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8 **BEFORE THE**
9 **BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation)
12 Against:) NO. AC-1999-20
13)
14 PAUL J. DEGREGORIO)
P.O. Box 6870) A C C U S A T I O N
14 San Carlos, CA 94070)
15)
15 Board of Accountancy)
16 No. CPA 42517)
16)
17 Respondent.)

18 Complainant Carol B. Sigmann, as cause for disciplinary
19 action, alleges:

20 1. Complainant is the Executive Officer of the California
21 Board of Accountancy ("Board") and makes and files this
22 accusation solely in her official capacity.
23

24 **LICENSE INFORMATION**

25 2. On or about May 10, 1985, Board Certificate number CPA
26 42517 (the "Certificate") was issued by the Board to Paul J.
27 DeGregorio ("respondent"). The certificate is subject to renewal

1 every two years pursuant to California Business and Professions
2 Code (hereinafter "Code") section 5070.6.

3 3. The applicable renewal period for the Certificate is
4 March 1 through February 28 of odd numbered years. The Board's
5 licensing records were transferred to the Department of Consumer
6 Affairs' centralized computer system in March 1989. As a result,
7 the underlying documentation related to license history prior to
8 that date is unavailable. The computerized records reflect that,
9 in March 1989, the Certificate was in an active status.

10 4. The Certificate expired and was not valid during the
11 period of March 1, 1995 through November 28, 1995, for the
12 following reasons:

13 a. The renewal fee, required by Code section 5070.5,
14 was not paid;

15 b. Declaration of compliance with continuing
16 education regulations was not submitted.

17 5. The Certificate was renewed effective November 29, 1995,
18 through February 28, 1997, upon receipt of the renewal fee and
19 evidence of compliance with the continuing education regulations
20 from respondent.

21 6. The Certificate expired and was not valid during the
22 period of March 1, 1997, through April 26, 1999, for the
23 following reasons:

24 a. The renewal fee, required by B&P Code Section
25 5070.5, was not paid;

26 b. Declaration of compliance with continuing

27 //

1 education regulations was not submitted.

2 7. The Certificate was renewed effective April 27, 1999,
3 upon receipt of the renewal fee, and declaration of compliance
4 with continuing education requirements by respondent.

5 STATUTES AND REGULATIONS

6 8. Code section 5100 provides that the Board may revoke,
7 suspend or refuse to renew any permit or certificate issued by
8 the Board, or may censure the holder of any such permit or
9 certificate, for unprofessional conduct, including but not
10 limited to "(f) Willful violation of this chapter or any rule or
11 regulation promulgated by the board under the authority granted
12 under this chapter."

13 9. Code section 5050 provides that: "No person shall engage
14 in the practice of public accountancy in this State unless such
15 person is the holder of a valid permit to practice public
16 accountancy issued by the board..."

17 10. Code section 5051 defines the practice of "public
18 accountancy" to include one who:

19 "(a) Holds himself or herself out to the public in any manner as
20 one skilled in the knowledge, science and practice of accounting,
21 and as qualified and ready to render professional service therein
22 as a public accountant for compensation.

23 (b) Maintains an office for the transaction of business as a
24 public accountant.

25 (c) Offers to prospective clients to perform for compensation,
26 or who does perform on behalf of clients for compensation,
27 professional services that involve or require an audit,

1 examination, verification, investigation, certification,
2 presentation, or review, of financial transactions and accounting
3 records.

4 (d) Prepares or certifies for clients reports on audits or
5 examinations of books or records of account, balance sheets, and
6 other financial, accounting and related schedules, exhibits,
7 statements, or reports which are to be used for publication or
8 for the purpose of obtaining credit or for filing with a court of
9 law or with any governmental agency, or for any other purpose..."

10 11. Code section 125.9 provides that the Board "may
11 establish, by regulation, a system for the issuance to a licensee
12 of a citation which may contain an order of abatement or an order
13 to pay an administrative fine assessed by the [Board] where the
14 licensee is in violation of the applicable licensing act or any
15 regulation adopted pursuant thereto."

16 12. The Board's regulations, codified in Title 16 of the
17 California Code of Regulations (hereinafter, "CCR"), provide, in
18 CCR section 95 et seq. for the issuance of citations. In
19 particular, CCR section 95.4 provides that "The failure of a
20 licensee to comply with a citation containing an assessment of
21 administrative fine, an order of correction or abatement or both
22 an administrative fine and an order of correction or abatement
23 after this citation is final and has been served in accordance
24 with the provisions of section 11505(c) of the Government Code
25 shall constitute a ground for revocation or suspension of the
26 license or permit."

27 13. CCR section 66, provides that: "An individual

1 practitioner shall not use the plural designations 'Certified
2 Public Accountants' or 'Public Accountants.' "

3 14. CCR section 89 provides that in order to receive
4 continuing education credit for attending or conducting (i.e., as
5 an instructor or leader) a continuing education course, the
6 licensee must obtain and retain for four years after renewal a
7 certificate of completion or its equivalent signed by the course
8 provider containing specific information, including: the
9 licensee's name; the name of the school or organization
10 conducting the course; the location of the course; the title or
11 description of the course; and the date(s) of attendance. In
12 addition, CCR section 89(f) provides that: "A licensee who is
13 determined by the Board not to have completed the required number
14 of hours of qualifying continuing education shall be required to
15 make up any deficiency. A licensee who is required to make up a
16 deficiency shall be ineligible for active status license renewal
17 ... until such time as documentation to support the required
18 hours of continuing education for license renewal has been
19 submitted."

20 15. CCR section 94 provides that the failure to comply with
21 the Board's continuing education rules constitutes cause for
22 disciplinary action under Code section 5100.

23 16. Under Code section 118(b), the suspension, expiration,
24 or forfeiture by operation of law of a license issued by the
25 Board, or its suspension, forfeiture, or cancellation by order of
26 the Board or by order of a court of law, or its surrender without
27 the written consent of the Board, shall not, during any period in

1 which it may be renewed, restored, reissued, or reinstated,
2 deprive the Board of its authority to institute or continue a
3 disciplinary proceeding against the licensee upon any ground
4 provided by law or to enter an order suspending or revoking the
5 license or otherwise taking disciplinary action against the
6 license on any such ground.

7 CAUSE FOR DISCIPLINE

8 17. Respondent Paul J. DeGregorio is subject to
9 disciplinary action for unprofessional conduct in violation of
10 CCR Section 95.4, in conjunction with B&P Code section 5100(f),
11 because he failed to comply with Board Citation No. CT-1998-7
12 (the "Citation"). Following an administrative review of the
13 Citation (at respondent's request), the Citation was modified,
14 and a Decision of the Board was issued accordingly, effective
15 January 6, 1999 (the "Decision"). A true and correct copy of the
16 Decision is attached hereto as Exhibit "A" and included by
17 reference herein as though fully set forth. The circumstances of
18 the Citation and the Decision are as follows¹:

19 a. On or about October 7, 1997, Citation No. CT-98-7
20 was issued to respondent. The Citation was subsequently amended
21 by the Board and re-issued to respondent. Respondent timely
22 appealed the amended Citation, and a hearing on the amended
23 Citation was held before Administrative Law Judge ("ALJ") Michael
24 A. Cohn, on October 13, 1998.

25 b. Following the administrative hearing and the

26
27 1. A more detailed discussion of the circumstances of the
Citation are contained in the Decision, Exhibit A herein.

1 issuance of a proposed decision by ALJ Cohn, the Board adopted
2 the proposed decision as its Decision, with an effective date of
3 January 6, 1999. The Decision was served upon respondent by
4 regular and certified mail at his address of record.

5 c. The Decision affirmed the amended Citation², with
6 modifications, as follows:

7 1) Item 1: Respondent violated Code section 5050, in
8 that from March 1, 1995, through November 28, 1995, and
9 from March 1, 1997, to the present, respondent engaged
10 in the practice of public accountancy without a valid
11 permit. The Decision ordered respondent to pay an
12 administrative fine of \$750, discontinue the practice
13 of public accountancy until his Certificate was made
14 current by reporting the appropriate continuing
15 education hours, and submit a renewal application for
16 the renewal period ended February 28, 1997, with
17 appropriate fees and continuing education
18 documentation.

19 2) Item 2: Respondent violated CCR section 66, in
20 that from at least June 1994, through September 1997,
21 respondent represented himself in a plural manner as
22 "DeGregorio & Co., Certified Public Accountants" when
23 in fact, respondent is an individual practitioner. The
24 Decision ordered respondent to discontinue practicing
25 under the name of "DeGregorio & Co., Certified Public
26

27 2. The Decision dismissed Item 3 of the amended Citation.

1 Accountants," and to submit evidence to the Board that
2 all letterhead, business cards, phone directories and
3 business signage correctly reflect the singular
4 designation "Certified Public Accountant" within thirty
5 (30) days of the effective date of the Decision (i.e.,
6 by February 5, 1999).

7 3) The Board notified respondent by a letter dated
8 December 7, 1998, attached to its service of the
9 Decision³, that the administrative fines, and the order
10 of correction in Item 2 (evidence of singular
11 designation) were due in their entirety to the Board no
12 later than March 7, 1999.

13 d) On January 15, 1999, the Board's investigative
14 CPA, Stephen E. DeRose ("DeRose"), visited respondent at his
15 office, located at 961 Laurel Street, San Carlos, California⁴.
16 The advertising placard on street level advertised respondent's
17 office as "DeGregorio & Co., CPA's." Respondent stated to DeRose
18 that "I haven't gotten around to changing the sign yet."

19 e) DeRose observed respondent engaged in the practice
20 of public accountancy at this time, as respondent was meeting
21 with a client⁵. When asked by DeRose why he continued to
22 practice with an expired permit, respondent stated to DeRose "to
23

24 3. A copy of said letter is also attached to Exhibit A
25 hereto and incorporated by reference herein.

26 4. This is respondent's office address of record.

27 5. A "client" is defined in Code section 5035.2.

1 date, no one has told me to cease using my designation or to
2 cease practicing."

3 f) When asked by DeRose what steps he had taken to
4 meet compliance with the Decision, respondent stated that he had
5 provided all his continuing education hours and renewal payment
6 to the Board. When advised by DeRose that many of the hours
7 submitted to the Board were not allowable as they did not meet
8 the Board's criteria for continuing education documentation as
9 contained in the Board's regulations, respondent stated "why
10 should I take more CE hours if the Board is merely going to
11 disallow them?"

12 f) On or about April 27, 1999, the Board received the
13 Certificate renewal fee and declaration of compliance with
14 continuing education regulations from respondent.

15 18. Respondent is further subject to discipline for
16 unprofessional conduct in violation of Code section 5050, in
17 conjunction with Code section 5100(f), in that respondent engaged
18 in the practice of public accountancy, without a valid permit, as
19 set forth above in paragraph 17.

20 19. Respondent is further subject to discipline for
21 unprofessional conduct in violation of CCR section 66, in
22 conjunction with Code section 5100(f), in that respondent
23 represented himself in a plural manner as "DeGregorio & Co.,
24 Certified Public Accountants" when in fact, respondent is an
25 individual practitioner, as set forth above in paragraph 17.

26 20. Respondent is further subject to discipline for
27 unprofessional conduct in violation of CCR section 94, in

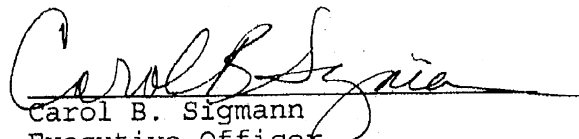
1 conjunction with Code section 5100(f), in that respondent failed
2 to timely comply with the Board's continuing education rules, as
3 set forth above in paragraph 17.

4 PRAYER

5 WHEREFORE, complainant requests that the Board hold a
6 hearing on the matters alleged herein, and that following said
7 hearing, the Board issue a decision:

- 8 1. Revoking, suspending, or otherwise imposing
9 discipline upon Certified Public Accountant
10 Certificate Number 42517, issued to Paul J.
11 DeGregorio;
12 2. Taking such other and further action as the Board
13 deems proper.

14 DATED: July 23, 1999
15

16 
17 Carol B. Sigmann
18 Executive Officer
19 Board of Accountancy
20 Department of Consumer Affairs
21 State of California
22 Complainant

23 03541110-SF1999AD0366
24 C:\Dat\wp\ACCTING\DeGreg\ACCUSATN.WPD
25 (6/28/99 am)
26
27

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Issued to:)
)

PAUL J. DE GREGORIO)
P.O. Box 6870)
San Carlos, CA 94070-6870)

Respondent.)
_____)

Citation No. CT-98-7

OAH No. N1998080458

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Consumer Affairs, Board of Accountancy, as its Decision in the above-entitled matter.

This Decision shall become effective on JANUARY 6, 1999.

IT IS SO ORDERED DECEMBER 7, 1998.

H.E. Mulhearn

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Issued to:)	
)	
PAUL J. DE GREGORIO)	Citation No. CT-98-7
P.O. Box 6870)	
San Carlos, CA 94070-6870)	OAH No. N1998080458
)	
Respondent.)	
_____)	

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on October 13, 1998.

Jessica M. Amgwerd, Deputy Attorney General, represented the Board of Accountancy.

Respondent Paul J. De Gregorio represented himself.

FACTUAL FINDINGS

Citation history

1. On October 7, 1997 Carol Sigman, Executive Officer of the State Board of Accountancy (Board) issued Citation No. CT-98-7 to Paul J. De Gregorio (respondent). The following violations were cited:

Item 1: Business and Professions Code section 5050—engaging in the practice of public accountancy without a valid permit during the periods March 1, 1995 through November 28, 1995 and March 1, 1997 through the date of the citation.

For this item, respondent was assessed an administrative fine of \$1500, was issued an order of abatement to discontinue engaging in the practice of public accountancy until his license was brought into current status "with the appropriate continuing education hours reported," and was issued an order of correction to submit a renewal application "with the appropriate fees and documentation to support continuing education hours for the renewal period ended February 28, 1997."

Item 2: Title 16, California Code of Regulations section 66—improper use of a plural, rather than singular, designation in the name "De Gregorio & Co., Certified Public Accountants" during the period from at least June 1994 through September 1997.

For this item, respondent was assessed an administrative fine of \$750, was issued an order of abatement to "discontinue practicing under the name 'De Gregorio & Co., Certified Public Accountants' until evidence of compliance with California Code of Regulations section 67 [sic] can be supplied," and was issued an order of correction to submit revised letterhead, business cards, phone directory and business signage to show a change to the singular designation "Certified Public Accountant."

Item 3: Title 16, California Code of Regulations section 3—failure to notify the Board of his change of address.

For this item, respondent was assessed an administrative fine of \$250 and was ordered to submit a change of address to the Board.

Respondent was advised that, unless contested, the citation would become a final order of the Board on November 7, 1997. In two telephone conversations he had on November 6 with Board investigator Larry Finney, respondent was advised that if he wished to avoid having the citation become a final order he needed to have his appeal postmarked by midnight of November 7.

2. On November 7, 1997 respondent signed a notice of appeal contesting the citation. The notice was postmarked December 10 and was received by the Board on December 12. At the same time, respondent submitted to the Board his "Delinquent Renewal Notice" together with the required fees of \$150. On the "Continuing Education Questionnaire and Reporting Form" attached to that renewal respondent reported 75 hours of continuing education for the period March 1, 1995 through February 28, 1997.

3. On November 20, 1997 the Board notified respondent that because he had not contested the citation by November 7, his "appeal to citation 98-7 cannot be considered and will remain as originally issued." However, the Board further notified respondent that it had "revisited" Item 3 of the citation and was withdrawing the cited violation and related administrative fine. An amended citation was issued showing that respondent had met compliance with the orders of correction for Items 2 and 3, that the administrative fine for Item 3 was withdrawn and that the due date for payment of the administrative fines for Items 1 and 2 and to comply with the order of correction for Item 1 had been extended to December 15, 1997 (from the original compliance date of November 7, 1997).

Respondent's Delinquent Renewal Notice and check for \$150 were returned to him with this letter. He was advised that the information submitted with his renewal application showed only 75 hours of qualifying continuing education when 80 hours was required. Respondent was advised, "You may resubmit the application and fees once the appropriate continuing education hours can be supported."

4. Following discussions with respondent in which he asserted he had timely filed his appeal of the citation by mailing it at the post office at 4:50 p.m. on November 7, and because of concerns that respondent had not been given the opportunity to contest the amended citation, on January 23, 1998 the amended citation was modified to extend the previously stated December 15, 1997 compliance date to February 23, 1998 and to give respondent until that date to file an appeal.

5. By a letter sent by facsimile to the Board at 9:51 p.m. on February 23, 1998 respondent appealed the amended citation.

Item 1—Practicing without a valid permit

6. On May 10, 1985 respondent was issued certificate number CPA 42517 as a Certified Public Accountant. The certificate is subject to renewal every two years, with respondent's renewal period running from March 1 through February 28 of odd-numbered years.

7. On August 28, 1993 respondent signed a "Certificate of Experience" attesting to the experience of his wife, Kris DeGregorio, a CPA candidate. Because of the relationship between respondent and the candidate, the Board's CPA Qualifications Committee requested respondent to appear before it to review the documentation of his wife's experience. When respondent failed to appear as requested on four separate occasions, the Qualifications Committee referred the matter to the Board's Administrative Committee for possible disciplinary action.

When respondent appeared before the Administrative Committee in October 1995 it was discovered that respondent's license had not been renewed after its most recent expiration on February 28, 1995. Respondent then took the necessary actions to renew his license, which was reinstated effective November 29, 1995.

8. It is undisputed that respondent continued to engage in the practice of public accountancy during the period his license was not renewed: March 1 through November 28, 1995. Respondent was unable to offer any explanation why his license was allowed to lapse in 1995.

9. Respondent again failed to renew his license when it was next due, by February 28, 1997. Respondent's only explanation for this failure is that he was either "guilty of procrastination" or "guilty of being too busy." Respondent concedes that allowing his license to lapse a second time "was stupid." While he admits making mistakes, he asserts he has done the best he could considering that he had a practice to run and a family to raise.

10. It is unclear when the Board notified respondent that his license had again expired. At the latest, this first notification occurred when respondent was served with the October 7, 1997 citation. A month later, on or about November 7, respondent submitted his

delinquent renewal application, the fee due and a list of continuing education courses he had taken. Since respondent listed only 75 hours of continuing education when 80 were required, the Board rejected respondent's renewal application and returned it to him on November 20 with the advice that he could "resubmit the application and fees once the appropriate continuing education hours can be supported." Respondent has never resubmitted the application and fees and has continued to engage in the practice of public accountancy without a valid license since March 1, 1997. Respondent has, however, attempted to provide support for his continuing education hours.

Following telephone discussions in November and December 1997 with Sara Narvaez-Smith, the Board's citation and fine analyst, respondent was given until January 9, 1998 to submit verification of his continuing education hours. On January 9 respondent faxed to Narvaez-Smith supporting documentation for 76 hours of continuing education, including an 8-hour class taken in November 1997. In his cover letter, respondent acknowledged his understanding "that some of the documentation is not sufficient for 'proof of attendance'" and indicated he would supply her with copies of his letters to those sponsoring organizations for which documentation was lacking. No evidence was presented to show that respondent ever attempted to submit these additional letters.

11. On January 23, 1998, at the same time the citation was modified to extend the previously stated December 15, 1997 compliance date to February 23, 1998 and to give respondent until that date to file an appeal, Narvaez-Smith notified respondent that the Board had been able to accept only 51 hours of the 76 continuing education hours he had submitted. The Board rejected the 8-hour November 1997 class because it occurred after the applicable March 1, 1995 to February 28, 1997 education period. An additional 17 hours were rejected because of insufficient documentation. Respondent was sent a "Participant Attendance Confirmation (PAC)" form he could send directly to the providers of the rejected courses to verify his attendance. Respondent was asked to provide this additional documentation by no later than February 23, 1998, the extended compliance date for the citation.

12. In his appeal of the citation faxed to the Board at 9:51 p.m. on February 23, 1998 (Finding 5) respondent stated, "I would maintain that allowing my license to lapse, not once, but twice is unexcusable [sic]. The insult to injury was falling 5 hours short of my continuing education requirement for the two years ended February 28, 1997. I have no rational response for this deportment. I apologize." Respondent indicated he was "working towards providing you with the documentation for the CPE claimed for the year ended February 28, 1998." Despite this, however, respondent has submitted no further documentation.

13. On June 18, 1998 Narvaez-Smith notified respondent by letter that he had failed to satisfy the Board's request for further documentation about his continuing education and again reminded him to "cease and desist engaging in the practice of public accountancy" until his license was "brought to a current status with the appropriate continuing education hours reported."

Item 2—Improper use of plural designation

14. During the 1995 investigation which began when respondent was referred to the Board's Administrative Committee because of his repeated failure to appear before the CPA Qualifications Committee it was discovered that although respondent is a sole practitioner, his letterhead bore the plural designation "De Gregorio & Company, Certified Public Accountants." After it was pointed out during the Administrative Committee meeting in October 1995 that this was improper, respondent changed his letterhead and business cards to the singular designation, "De Gregorio & Company, Certified Public Accountant." However, during an investigative visit in September 1997 it was determined that two signs at respondent's office, one on the door and one on the building directory, stated, "De Gregorio & Co. C.P.A.'s." Thus, although the amended citation issued in November 1997 indicated that respondent had complied with the order of correction for Item 2 to change his "letterhead, business cards, phone directory and business signage," the last of these items had not been corrected.

15. Concerning the signage, respondent maintains that these were put up by the building's owner, not by him. He concedes he did not ask the owner to change the signs, stating he did not do so because "I hadn't really focused on it."

Item 3—Failure to notify Board of change of address

16. Although respondent changed his office address in July 1996, he did not notify the Board of his new address until on or about November 7, 1997, when he submitted his delinquent renewal notice after issuance of the citation. Respondent explains he was unaware that he was required to advise the Board of an address change within 30 days of the change.

17. Although the amended citation issued on November 20 indicated only that respondent had complied with the order of correction for Item 3 and that the civil fine was withdrawn, the cover letter sent that date indicated the Board was actually withdrawing the cited violation. Based upon that letter, it is found that Item 3 has been fully dismissed and no determination concerning it need be made in this proceeding.

Other matters

18. Concerning his continuing education hours, respondent asserts he actually did complete 75 hours of continuing education during the period March 1, 1995 through February 28, 1997. Respondent questions the Board's rejection of the additional 8-hour class he took in November 1997 since Narvaez-Smith had advised him in December 1997 that if he could document 75 hours of continuing education the Board would allow him to use a class taken after the applicable period to satisfy the remaining five hours he needed.

19. Respondent concedes that he failed to "cease and desist" his public accounting practice even after being advised by the Board that he was required to do so because his license was not valid. Respondent asserts he did not comply with the Board's order because he

had already filed his renewal application and believed he had fulfilled all the requirements for renewing his license. Respondent felt the Board was "just trying to bust me in the chops" for reasons that were unclear to him and that to cease and desist would deprive him of his "right to earn a living and support my family . . . all because I'm five hours short on my CE."

20. Respondent asserts that the administrative fees being assessed by the Board are punitive. He points out that the annual certificate renewal fee is \$150, yet he is being assessed a fine ten times that for failing to renew his license on time. Respondent also maintains the fines will impose a financial hardship on him; he is a sole practitioner trying to support his wife and four children, he drives a 1983 car and lives in a 1200 square foot house.

21. Respondent was cooperative and pleasant with the Board's investigators during the course of the investigation. At the hearing, he appeared to be a friendly and personable man.

LEGAL CONCLUSIONS

1. Cause for citation against respondent exists pursuant to Title 16, California Code of Regulations section 95 in that respondent violated:

a) Business and Professions Code section 5050 by engaging in the practice of public accountancy during two periods when his certificate was not valid—March 1, 1995 through November 28, 1995 and March 1, 1997 to the present; and

b) Title 16, California Code of Regulations section 66 by using the plural designation "Certified Public Accountants" when he was only entitled to use the singular designation.

2. Other than being busy or procrastinating, respondent was unable to offer any explanation for his twice having failed to renew his license on time. Respondent's second violation of section 5050 was particularly aggravated. Respondent was clearly advised, when the citation was issued in November 1997, that he needed to cease and desist the practice of public accountancy until his license was renewed. He was given numerous opportunities to present the necessary continuing education hours to the Board to allow this renewal, but repeatedly failed to do so. Although respondent testified he felt he had met all the requirements for renewal of his license he knew the Board did not share that belief. Yet respondent continued to thumb his nose at the Board by making no additional effort after January 9, 1998 to verify his continuing education hours and by remaining in practice in the face of the Board's clear cease and desist orders.

It must also be noted that respondent's repeated assertion that he is only five hours short on his continuing education is not true. Respondent has provided to the Board verification of only 76 claimed hours, eight of which occurred after the appropriate educational period. While the Board could have considered those extra eight hours had respondent been just a few hours short of the educational requirement, in January 1998 respondent sub-

mitted purported verification of only 68 hours of continuing education for the period March 1, 1995 through February 28, 1997. Thus even if the Board had not rejected any of respondent's offered documentation he remained 12 hours short of the minimum requirement of 80 hours. And despite the Board's having provided respondent additional opportunities to fully document his claimed hours he failed to do so.

3. In mitigation of his improper use of a plural designation in his namestyle, it is noted that when he was first notified of the violation in October 1995 respondent took steps to change his letterhead and business cards. Despite the notation in the amended citation of November 1997 that respondent had complied with the order of correction regarding this item, he had not, in fact, fully complied since his office signs still referred to a plural designation of "C.P.A.'s." This continued violation is only partially mitigated by the fact that these designations were on signs put up by the building owner, not by respondent himself. But respondent must bear some responsibility for the signs not having been changed. He knew of the Board's concern yet took no action to ask his landlord to make the necessary changes.

4. Respondent may be a pleasant and cooperative person. But he has demonstrated a repeated pattern of failing to comply with the Board's simple and lawful requests. Further, when he has complied with the Board's requests it has almost always been at the last possible moment (see Findings 2, 5 and 10, paragraph 2). This pattern is also a factor to be considered in aggravation of the violations.

5. While respondent asserts that the fines assessed by the Board are punitive, both are below the maximum fines permitted by Title 16, California Code of Regulations section 95.2. In the case of Item 2, the fine is well below the maximum of \$2,000. Considering all the evidence presented, it is determined that the fine assessed for Item 1, \$1,500, is fully warranted. In light of the mitigating evidence discussed in Conclusion 2, it is determined that the fine assessed for Item 2 should be reduced to some extent. A reduction from \$750 to \$500 would be appropriate.

6. Respondent's assertion that imposition of the fines would impose a financial hardship upon him and his family was undisputed. In consideration of that, and in the interests of justice, the total fine of \$2,000 is reduced to \$1,250.

7. The orders of correction imposed for Items 1 and 2 in the original citation are determined to be appropriate. Although the amended citation indicated respondent had complied with the order of correction for Item 2, in fact he has not fully done so. It would therefore be appropriate to modify that order of correction to reflect what respondent still must do to insure compliance with the original citation order.

ORDER

Citation No. CT-98-7 issued to respondent Paul J. De Gregorio is modified as follows:


1. The order of correction for Item 2 is amended to read as follows:

Within 30 days of the effective date of this decision respondent shall submit to the Board evidence that all letterhead, business cards, phone directories and business signage correctly reflect the singular designation "Certified Public Accountant."
2. The administrative fine assessed for Item 2 is reduced to \$500.
3. The violation cited, order of correction and administrative fine assessed for Item 3 are dismissed.
4. The total administrative fine assessed for Items 1 and 2 is reduced to \$1,250.

In all other respects, including the order of abatement requiring respondent to discontinue engaging in the practice of public accountancy in California until certificate number CPA 42517 is brought into current status with the appropriate continuing education hours reported, the citation is affirmed.

Should respondent fail to fully comply with this order within 30 days of the effective date of this decision, or such later date as the Board may determine, action to revoke or suspend respondent's license may be taken pursuant to Title 16, California Code of Regulations section 95.4.

DATED: October 29, 1998



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings



BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3862
(916) 263-3680



Attachment 2

Paul J. DeGregorio
P.O. Box 4061
Menlo Park CA 94026

Citation No. CT-98-7
License No. CPA 42517

An investigation has been conducted by the California Board of Accountancy. This citation is hereby issued to you pursuant to the Board of Accountancy's authority under Sections 125.9 and 5100 of the Business and Professions Code and Rule 95 - 95.6 of Title 16, Chapter 1 of the California Code of Regulations (hereinafter "Board Rules") for the violation(s) which were found during the investigation.

This citation details each violation charged and orders of correction where applicable. IT IS YOUR RESPONSIBILITY TO READ THE ENTIRE CITATION.


Unless contested, this citation shall become a final order of the Board on November 7, 1997, the Order of Correction is due on or before November 7, 1997, and the administrative fine totaling \$2500 is due on or before November 7, 1997.

You are responsible for notifying the Board of Accountancy when correction is made. Proof of correction must be received at the above address no later than five (5) working days after the correction due date.

Payment of the administrative fine should be made payable to the State Board of Accountancy by cashier's check or money order. Please include the citation number on the payment and on all correspondence.

FAILURE TO RESPOND TO THIS CITATION WILL RESULT IN FURTHER DISCIPLINARY ACTION AGAINST YOUR LICENSE.

October 7, 1997
Date


CAROL SIGMANN
Executive Officer
STATE BOARD OF ACCOUNTANCY

CS:SNS:teo

Item No. 1

Section(s)

Violated:

Business and Professions Code, Division 3, Chapter 1, Article 3,
SECTION 5050:

"No person shall engage in the practice of public accountancy in this State unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this State on professional business incident to his regular practice in another state or country."

Description
of Violation:

During the period March 1, 1995, through November 28, 1995, Paul J. DeGregorio engaged in the practice of public accountancy without a valid permit in violation of Business and Professions Code, Section 5050.

During the period from March 1, 1997, to present, Paul J. DeGregorio has engaged in the practice of public accountancy without a valid permit in violation of Business and Professions Code, Section 5050.

Order of
Abatement:

Pay the administrative fine as set forth in the citation,

and;

Discontinue engaging in the practice of public accountancy in California until such time that CPA license 42517 is brought to a current status with the appropriate continuing education hours reported.

Order of
Correction:

Submit a renewal application with the appropriate fees and documentation to support continuing education hours for the renewal period ended February 28, 1997,

or;

If it is not your intention to renew CPA license 42517 or it is your intention to renew the license on "inactive" status, please state this intention in writing and complete the necessary requirements.

Time to
Correct:

30 days

Administrative
Fine:

\$1500

Item No. 2

Section(s)
Violated:

California Code of Regulations, Title 16, Division 1. **STATE BOARD OF ACCOUNTANCY ARTICLE 9, SECTION 66:**

"A certified public accountant or a public accountant in practice as an individual shall not use a firm name which includes plural terms such as "and Company" or "and Associates," unless he or she maintains a full-time professional staff consisting of a licensee or an employee or assistant as described in Section 5053 of the Accountancy Act. An individual practitioner shall not use the plural designations "Certified Public Accountants" or "Public Accountants."

Description
of Violation:

During the period from at least June 1994 through September 1997, Paul J. DeGregorio has represented himself as "DeGregorio & Co., Certified Public Accountants." Such representation violates California Code of Regulations, Section 67 which states that an individual practitioner shall not use the plural designation "Certified Public Accountants."

Order of
Abatement:

Discontinue practicing under the name of "DeGregorio & Co., Certified Public Accountants" until evidence of compliance with California Code of Regulations, Section 67, can be supplied.

Order of
Correction:

Submit copies of revised letterhead, business cards, phone directory and business signage reflective of the singular designation "Certified Public Accountant."

Time to
Correct:

30 days

Administrative
Fine:

\$750

Item No. 3

Section(s)
Violated:

California Code of Regulations, Title 16, Division 1, State Board of Accountancy Article 1, **Section 3** (Revised July 1, 1997):

- "(a) Each licensee shall report to the board in writing any change in his or her address of record within 30 days after the change. The report shall include the licensee's previous address of record. The address of record is public information. Each licensee shall report to the Board in writing any change in his or her telephone number within 30 days after the change. The report shall include the licensee's previous telephone number.
- (b) If the address of record is not the licensee's primary place of employment or residence or is a post office box or mail drop, then the licensee shall also report the street address and telephone number of either his or her primary place of employment or his or her residence.
- (c) Each licensee shall report any change in the address of any location where he or she is engaged in the practice of public accountancy within 30 days after the change. Each licensee shall report any change in the telephone number of any location where he or she is engaged in the practice of public accountancy within 30 days after the change.
- (d) For purposes of this section, "licensee" includes any holder of an active, inactive, suspended, or expired license, permit, certificate, registration, or other authorization issued by the Board to practice public accountancy which is not canceled or revoked."

Description of
Violation:

During the period from at least September 1997 to present, Paul J. DeGregorio has been in violation of California Code of Regulations, Section 3, for failing to notify the Board of his change of address.

This violation is evidenced by the fact that documents sent to Paul J. DeGregorio's current address of record, a post office box, have been unanswered. In addition, evidence has been obtained reflecting that Paul J. DeGregorio has moved his office location from Menlo Park to San Carlos without notifying the Board of Accountancy.

Order of
Abatement:

Pay the administrative fine as set forth in the citation.

Order of
Correction:

Submit a change of address to the Board of Accountancy following the requirements of Section 3 as amended July 1, 1997.

Time to
Correct:

30 days

Administrative
Fine:

\$250



BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675



November 20, 1997

Attachment 3

Paul J. DeGregorio
P.O. Box 6870
San Carlos CA 94070-6870

RE: CT-98-7/ CPA 42517

Dear Mr. DeGregorio:

The California Board of Accountancy is in receipt of your appeal to citation 98-7. As evidenced on the envelope submitted, your appeal was postmarked November 10, 1997.

Your attention is directed to California Code of Regulations, Title 16, Article 12.5, Section 95.5 which states in pertinent part: "Any person or entity served with a citation pursuant to this Article and Sections 125.9 and 148 of the Business and Professions Code may contest the citation by appealing to the board in writing within 30 calendar days of the issuance of the citation." emphasis added

According to Board records, citation 98-7 was issued on October 7, 1997; therefore, your appeal would need to have been submitted no later than November 7, 1997, in order to be considered. Additionally, in your phone conversation with Investigative CPA Laurence Finney on November 6, 1997, this 30-day appeal deadline was clearly emphasized. Therefore, based upon the Board's non-receipt of your request within the 30-day time period, your appeal to citation 98-7 cannot be considered and will remain as originally issued.

The Board has, however, revisited the citation and administrative fine issued for violation of California Code of Regulations, Title 16, Division 1, State Board of Accountancy Article 1, Section 3, relative to Change of Address. This review was based upon additional information provided by Investigative CPA Finney. Accordingly, the decision has been made to withdraw the citation and related administrative fine. The citations and related administrative fines for violation of Business and Professions Code Section 5050 - \$1500, and California Code of Regulations, Section 66 - \$750, will remain as originally issued.

You are hereby provided until December 15, 1997, to comply with this amended citation. Be advised, Business and Professions Code, Section 125.9 (b)(5), states in pertinent part: "Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine."

Paul J. DeGregorio
November 20, 1997
Page 2

Lastly, your 1997 Delinquent Renewal Notice and check number 2819 in the amount of \$150 are being returned with this letter. According to the information provided on your renewal application and questionnaire, you completed 75 hours of continuing education during the period 3/1/95 - 2/28/97.

California Code of Regulations, Section 87 states in pertinent part:

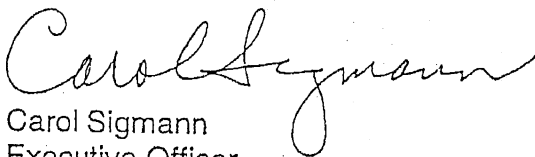
"(a) 80 Hours.

A licensee shall be required, as a condition of active status license renewal, to have completed at least 80 hours of qualifying continuing education in the two-year period immediately preceding license renewal. . . ."

You may resubmit the application and fees once the appropriate continuing education hours can be supported.

If you have any questions concerning these matters, please contact the Citation and Fine Program at (916) 263-3968. Your file will be held in abeyance until December 15, 1997, pending compliance with citation 98-7 as amended.

Sincerely,



Carol Sigmann
Executive Officer
California Board of Accountancy

CS:SNS:teo

Enclosures



BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3862
(916) 263-3680



Paul J. DeGregorio
P.O. Box 6870
San Carlos CA 94070-6870

Date: November 20, 1997
Citation No. CT-98-7
License No. CPA 42517

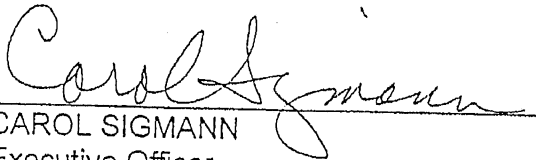
AMENDED CITATION

Please take notice that Citation No. CT-98-7 is hereby amended as follows:

Item Number	Violation Cited	Order of Correction	Time to Correct	Civil Fine	Due Date
1	Business and Professions Code, Section 5050	30 days	30 days	\$1500	December 15, 1997
2	California Code of Regulations, Section 66	Compliance Met	N/A	\$750	December 15, 1997
3	California Code of Regulations, Section 3	Compliance Met		Withdrawn	N/A

This citation is due and payable effective November 7, 1997. Failure to comply with the citation as amended, may result in this matter being referred to the Attorney General's Office for further action against your license.

November 20, 1997
Effective Date


CAROL SIGMANN
Executive Officer
CALIFORNIA BOARD OF ACCOUNTANCY